

# **MEMORANDUM OF UNDERSTANDING**

## **MD 33 ADA SIDEWALK UPGRADES**

by and between

**MARYLAND DEPARTMENT OF TRANSPORTATION  
STATE HIGHWAY ADMINISTRATION**

and

**TOWN OF ST. MICHAELS, MARYLAND**

THIS MEMORANDUM OF UNDERSTANDING (“**MOU**”), executed in duplicate, made effective this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between the Maryland Department of Transportation State Highway Administration, acting for and on behalf of the State of Maryland, hereinafter referred to as “**MDOT SHA**” and The Town of St. Michaels, Talbot County, Maryland hereinafter referred to as “**TOWN.**”

**WHEREAS**, MDOT SHA owns and maintains MD Route 33 (North Talbot Street) from North of Lee Street to South of Spencer Drive, hereinafter referred to as “**MD 33**”; and

**WHEREAS**, MD 33 functions as a roadway within the TOWN; and

**WHEREAS**, MDOT SHA under MDOT SHA TA2295133 proposes ADA compliant upgrades to sidewalk facilities on MD 33, hereinafter called, “**IMPROVEMENTS**”; and

**WHEREAS**, the IMPROVEMENTS shall include, but not be limited to, replacement of existing sidewalks in-kind, at times with some minor widening; and

**WHEREAS**, the Town has requested and MDOT SHA agreed to include granite curb and brick sidewalk in the commercial area where there is currently concrete sidewalk, hereinafter referred to as “**BETTERMENTS**”; and

**WHEREAS**, the BETTERMENTS will provide the TOWN the opportunity to include the sidewalk materials of their preference for enhanced aesthetics in their commercial area; and

**WHEREAS**, the IMPROVEMENTS and the BETTERMENTS can be jointly referred to as the “**PROJECT**”; and

**WHEREAS**, MDOT SHA and the TOWN agree that this MOU will benefit both parties of this MOU and will promote the safety, health and general welfare of the citizens of the State of Maryland and the TOWN.

**NOW, THEREFORE, THIS MEMORANDUM OF UNDERSTANDING WITNESSETH**, that for and in consideration of the mutual promises and valuable considerations, it be understood that MDOT SHA and the TOWN do hereby agree as follows:

### **I. PROJECT DESCRIPTION**

- A. The IMPROVEMENTS shall consist of ADA compliant upgrades to include, but not be limited to, the replacement of existing sidewalks in-kind and some minor widening. The limits of the IMPROVEMENTS along MD 33 (Talbot Street) shall

extend from North of Lee Street (mile point 12.830) to South of Spencer Drive (mile point 13.990).

- B. The BETTERMENTS shall include the limits of the IMPROVEMENTS and consist of the installation of brick sidewalk and granite curb, to replace existing concrete sidewalk and curb in the commercial center of the Town of St. Michaels.

## **II. DESIGN PHASE**

### **A. MDOT SHA Responsibility**

1. MDOT SHA shall perform or cause to be performed all activities necessary to design the Project.
2. MDOT SHA shall design the Project to MDOT SHA standards and specifications.
3. MDOT SHA shall provide the TOWN with Final design plans [FINAL] and Specifications & Estimates [PS&E] for its review and comment; however, MDOT SHA, after considering any TOWN comments, shall have sole authority to accept or reasonably reject the requested revisions and shall notify the TOWN of its decision.
4. In the event MDOT SHA desires to revise the plans for the Project subsequent to final plan approval, but prior to construction activities, MDOT SHA shall provide the TOWN with written notification of said revision.
5. In the event the TOWN desires to revise the plans for the Projects subsequent to final plan approval, but prior to initiation of construction activities, MDOT SHA shall review design change information including estimated costs. MDOT SHA shall have sole authority to accept or reasonably reject the requested revision and shall notify the TOWN of its decision.
6. MDOT SHA shall be responsible for applying for and obtaining all permits necessary for the construction of the Project.

### **B. TOWN Responsibility**

1. The TOWN shall review the plans for the Project and design related materials provided for that purpose and shall provide written comments to MDOT SHA within five (5) working days following receipt thereof.
2. In the event MDOT SHA desires to revise the plans for the Project subsequent to final plan approval, but prior to construction activities, the TOWN shall provide comments on or concurrence with the revisions within five (5) working days following receipt from MDOT SHA of the design change information. MDOT SHA shall have final approval. MDOT SHA shall be under no obligation to incorporate TOWN comments that do not comply with MDOT SHA's specifications and MDOT SHA shall have sole authority to accept or reasonably reject comments and shall notify the TOWN of its decision. If no comments are

received within five (5) working days as specified above, TOWN concurrence with the change will be assumed. The TOWN shall be solely responsible for verification of receipt by MDOT SHA of such comments as may be submitted to MDOT SHA.

3. In the event the TOWN desires to revise the plans for the Project subsequent to final plan approval, but prior to initiation of construction activities, the TOWN shall provide MDOT SHA with a written request of said revision including estimated costs, for MDOT SHA's review and/or approval; however, MDOT SHA shall have the sole authority to accept or reasonably reject the requested revision and notify the TOWN of its decision.

### **III. RIGHT-OF-WAY PHASE**

#### **A. MDOT SHA Responsibility**

MDOT SHA shall be responsible to acquire all right of way entry agreements required for the construction of the Project.

#### **B. TOWN Responsibility**

By execution of this MOU, the TOWN hereby grants to MDOT SHA, its agents, successors, assigns, contractors, sub-contractors, and employees, a right-of-entry onto any TOWN owned property necessary or convenient for the construction of the Project. The right-of-entry will terminate upon abandonment of the Project by MDOT SHA, completion and acceptance of the Project by MDOT SHA and the TOWN, or at another time if mutually agreed upon in writing.

### **IV. CONSTRUCTION PHASE**

#### **A. MDOT SHA Responsibility**

1. MDOT SHA shall (i) advertise the Project for construction bids, (ii) award and administer the construction contract, (iii) construct the Project as shown on the final plans, and (iv) provide construction engineering services (i.e., construction inspection and material testing/certification) for the Project.
2. In the event that revisions to the Project are required in MDOT SHA's sole judgment due to conditions encountered during construction, said revisions shall be promptly made by MDOT SHA without prior concurrence by the TOWN in order to minimize or eliminate possible delay claims by MDOT SHA's contractor. If time permits, the approval of the TOWN for revisions to the Project will be requested but is not required by MDOT SHA prior to its issuance to the contractor.
3. MDOT SHA shall coordinate all utility relocations necessary for the construction of the Project in accordance with MDOT SHA's Standard Utility Policy.

**B. TOWN Responsibility**

1. In the event the TOWN desires to make revisions to the Project subsequent to final plan approval and/or during construction, it shall promptly submit a request in writing to MDOT SHA, including the requested revisions and their estimated costs, for MDOT SHA concurrence, denial or modification. MDOT SHA's decision shall be final for issues concerning safety and public welfare.
2. The TOWN shall make its best effort to be available to MDOT SHA within twenty-four (24) hours of verbal notice from MDOT SHA to resolve conflicts and issues which may arise during the construction of the Project.

**V. DESIGN PHASE FUNDING**

**A. MDOT SHA Responsibility**

MDOT SHA shall be responsible for the cost to design the Project.

**B. TOWN Responsibility**

The TOWN shall be responsible for all costs incurred by the TOWN in reviewing the plans for the Project.

**VI. CONSTRUCTION PHASE FUNDING**

**A. MDOT SHA Responsibility**

1. MDOT SHA shall fund construction of the IMPROVEMENTS.
2. MDOT SHA shall fund all costs to (1) advertise the Project for construction bids, (2) award and administer the construction of the Project, and (3) provide Construction Engineering Services during construction of the Improvements.
3. MDOT SHA shall provide monthly invoices to the TOWN for construction of the BETTERMENTS including MDOT SHA's direct salaries, payroll burden and overhead for Construction Engineering Services and other direct costs such as materials testing.
4. MDOT SHA shall make a final accounting of actual costs incurred by MDOT SHA in constructing the BETTERMENTS upon completion of construction and acceptance of final quantities by MDOT SHA's construction contractor. MDOT SHA shall provide the final accounting to the TOWN upon completion of construction and acceptance of the Project.
5. If timely payment of invoices is not made by the TOWN as specified herein, MDOT SHA may make a deduction equal to the invoice amount from the TOWN's share of Highway User Revenue.
6. MDOT SHA shall take every reasonable action to: (a) eliminate the need for MDOT SHA's on-site contractor to file any "notice or intent to file a claim", or (b) mitigate any claim filed by the on-site contractor.

**B. TOWN Responsibility**

1. The TOWN shall fund construction of the BETTERMENTS consisting of; i) the TOWN's twenty eight and six hundredths percent (28.06%) share of the brick construction cost estimated at Two Hundred Nine Thousand One Hundred Six Dollars, (\$209,106), and ii) the TOWN's thirty four and seventy three hundredths percent (34.73%) share of the granite curb construction cost estimated at One Hundred Fifty Three Thousand Twenty Three Dollars, (\$153,023). Both preceding costs include MDOT SHA salaries, payroll burden and overhead, and Construction Engineering Services (i.e., construction inspection and material testing/certification).
2. Within thirty (30) days of the TOWN's receipt of the monthly invoice, the TOWN shall remit payment to MDOT SHA the amount of each monthly invoice. In the event the TOWN disputes the amount or quantities included in the invoice, the TOWN shall provide written documentation indicating the disputed items within twenty (20) days of receipt of the monthly invoice. MDOT SHA shall submit its normal supporting documentation for such invoice to the TOWN. Should the TOWN request additional documentation, MDOT SHA shall provide the TOWN with the requested documentation as long as it is a reasonable request and readily available to MDOT SHA.
3. In the event the TOWN does not make timely payments of invoices submitted by MDOT SHA, MDOT SHA may, upon twenty (20) business days' prior written notice to the TOWN, make a deduction from the TOWN's share of Highway User Revenue for all items that have been invoiced and are undisputed.

**VII. GENERAL**

- A. Md. State Finance and Procurement Code Ann. § 11-203 (a)(2)(iv), § 11-203 (b) and § 11-201 (c) provide that the following provisions of the General Procurement Law located in the Md. State Finance and Procurement Article of the Maryland Annotated Code, incorporated herein by reference, apply to this Agreement unless inapplicable by their terms or inconsistent with a Federal law, regulation or grant agreement or other Federal requirement that governs procurement or a procurement contract.

§ 11-205 ("Collusion");

§ 10-204 ("Approval for designated contracts");

§ Title 12, Subtitle 2 ("Supervision of Capital Expenditures and Real Property Leases");

§ 13-219 ("Required Clauses-Nondiscrimination Clauses");

§ 13-221 ("Disclosures to Secretary of State");

§ Title 12, Subtitle 4 ("Policies and Procedures for Exempt Units");

§ 15-112 ("Change orders");

§ Title 16 ("Suspension and Debarment of Contractors");

§ Title 17 ("Special Provisions—State and Local Subdivisions"); and

§ Title 14, Subtitle 3 (“Minority Business Participation”).

- B. The total amount to be reimbursed to MDOT SHA by the TOWN for the BETTERMENTS is Three Hundred Sixty Two Thousand One Hundred Twenty Nine Dollars, (\$362,129) such amount to include MDOT SHA’s direct salaries, payroll burden, overhead for Construction Engineering Services and/or consultant fees.
- C. MDOT SHA agrees to be responsible for construction costs for the IMPROVEMENTS.
- D. The cost of the BETTERMENTS includes a credit for the areas where IMPROVEMENTS are not installed.
- E. If the TOWN requires additional documentation regarding the lump sum invoice, the TOWN may have TOWN authorized personnel visit MDOT SHA to verify all documentation. The TOWN is to contact:

Ms. Carmella Ezekwe, Chief  
Accounts Receivable Section  
Office of Finance  
Maryland State Highway Administration  
Mail Stop C-504  
707 N. Calvert Street  
Baltimore MD 21202  
Email: [cezekwe@sha.state.md.us](mailto:cezekwe@sha.state.md.us)  
Phone: 410.545.5745

- F. The recitals (WHEREAS clauses) are incorporated herein as part of this MOU.
- G. Whenever the approval of the TOWN is required, such approval shall not be unreasonably denied, withheld or delayed. The parties hereto agree to cooperate with each other to accomplish the terms and conditions of this MOU.
- H. This MOU shall inure to and be binding upon the parties hereto, their agents, successors, and assigns.
- I. This MOU and the rights and liabilities of the parties hereto shall be determined in accordance with Maryland law and in the Maryland courts.
- J. Following completion of construction of the Project, The TOWN shall be responsible to maintain the new sidewalk.
- K. The parties hereby agree and affirm that the persons executing this MOU on their respective behalf are authorized and empowered to act on behalf of the respective parties. The parties hereby further warrant and affirm that no cause of action challenging the existence, scope, or validity of the MOU shall lie on the ground that the persons signing on behalf of the respective parties were neither authorized nor empowered to do so.
- L. All notices and/or invoices shall be addressed to:  
if to the TOWN:

Jean R. Weisman  
Town Clerk/Manager  
Commissioner of St. Michaels  
Town of St. Michaels  
300 Mill Street  
P.O. Box 206  
St. Michaels, MD 21663  
Phone: 410-745-9535  
E-mail: [jweisman@stmichaelsmd.gov](mailto:jweisman@stmichaelsmd.gov)

If to MDOT SHA:

Mekdes Tabor  
Transportation Design Engineer V  
Office of Highway Development  
Innovative Contracting Division  
Maryland Department of Transportation  
State Highway Administration  
707 N. Calvert Street, MS C-102  
Baltimore MD 21202  
Phone: 410-545-8809  
E-mail: [mtabor@mdot.maryland.gov](mailto:mtabor@mdot.maryland.gov)

with a copy to:

MDOT SHA Agreements Team  
Office of Procurement and Contract Management  
Maryland Department of transportation  
State Highway Administration  
Mail Stop C-405  
707 N. Calvert Street  
Baltimore MD 21202  
Phone: 410-545-5547  
E-mail: [SHAAgreementsTeam@sha.state.md.us](mailto:SHAAgreementsTeam@sha.state.md.us)

**IN WITNESS WHEREOF**, the parties hereto have caused this MEMORANDUM OF UNDERSTANDING to be executed by their proper and duly authorized officers, on the day and year first above written.

**MARYLAND DEPARTMENT OF  
TRANSPORTATION  
STATE HIGHWAY ADMINISTRATION**

\_\_\_\_\_  
WITNESS

By: \_\_\_\_\_ (SEAL)  
Jason Ridgway, PE  
Deputy Administrator / Chief Engineer for  
Planning, Engineering, Real Estate and  
Environment

\_\_\_\_\_  
Date

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:**

**RECOMMENDED FOR APPROVAL:**

\_\_\_\_\_  
Assistant Attorney General

\_\_\_\_\_  
Eric Marabello  
Director  
Office of Highway Development

\_\_\_\_\_  
William J. Bertrand  
Director  
Office of Finance



**TOWN OF ST. MICHAELS**  
**A body corporate and politic**

\_\_\_\_\_  
WITNESS

**BY:** \_\_\_\_\_(SEAL)  
Jean R. Weisman  
Town Clerk/ Manager  
Commissioners of St. Michaels

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

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